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Superior Court of California,
County of Alameda

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BARBARA J. PARKER, in her official capacity
as City Attorney for the City of Oakland and the
9 Oakland Independent Redistricting Commission

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11 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF ALAMEDA

13 BARBARA J. PARKER, in her official capacity as
14 City Attorney for the City of Oakland and the
Oakland Independent Redistricting Commission,

15 Petitioner,

16 vs.

17 TIM DUPUIS, in his official capacity as Registrar
18 of Voters, County of Alameda,

19 Respondent.

No.: **22CV005392**

Action Filed:

**VERIFIED PETITION FOR WRIT OF
MANDATE**

**IMMEDIATE ACTION REQUESTED –
ELECTION MATTER (Cal. Elec. Code
§ 13314)**

**NO FILING FEE:
EXEMPT PER CAL. GOV. CODE § 6103**

The Honorable: TBA
Dept.: TBA

1 Petitioner BARBARA J. PARKER, in her official capacity as City Attorney for the City
2 of Oakland and the Oakland Independent Redistricting Commission, alleges as follows:

3 **INTRODUCTION**

4 In 2014, Oakland voters approved a Charter amendment establishing a thirteen-member
5 Independent Redistricting Commission that would be responsible for redrawing the boundaries of the
6 seven City Council and Oakland Unified School Board districts every ten years after the decennial
7 census. City of Oakland Charter, § 220 [hereafter “Charter”].

8 The current Commission tasked with redrawing those lines for the next decade was
9 formed in late August, 2020 and met for the first time on October 14, 2020. Since then, the
10 Commission has undertaken its work in an open and transparent manner and has encouraged public
11 participation at every stage. In the last fourteen months, the Commission has held dozens of public
12 meetings and workshops, including ten public hearings at which the Commission received public
13 comment on draft maps. Throughout the Commission’s work, many dozens of people participated in
14 public hearings and meetings, and over a hundred unique speakers provided testimony. The
15 Commission received more than a thousand pages of written feedback from the public, and multiple
16 draft maps were submitted by the public. Since September 2021, when usable census data became
17 available, the Commission has drafted, reviewed and revised nearly a dozen of its own draft maps, and
18 conducted 12 meetings and seven workshops in an attempt to refine and adopt a final draft map.

19 Despite these exhaustive and good faith efforts, the Commission thus far has not been
20 able to adopt a final plan with the requisite super-majority vote (9 of 13 Commissioners must agree on
21 the final plan), and it did not meet the deadline set forth in the Charter to adopt a final plan by
22 December 31, 2021. Charter, § 220(G). In the event the Commission fails to adopt a plan by
23 December 31, the Charter requires that the City Attorney “immediately petition state court for an order
24 prescribing the boundary lines of the districts.” *Id.* § 220(G)(2). Importantly, a court-ordered plan is
25 meant to be temporary only, and used only “until a final plan is adopted by the commission to replace
26 it.” *Id.*

1 **PARTIES**

2 1. Petitioner BARBARA J. PARKER is the City Attorney of the City of Oakland,
3 and brings this action in her official capacity. The City Attorney is an elected position with a four-
4 year term. Petitioner was first appointed to the office of City Attorney to complete the term of the
5 first elected City Attorney, and subsequently was elected to four-year terms in 2012, 2016 and 2020.
6 Under the City of Oakland Charter, the City Attorney serves as counsel to the Mayor, City Council,
7 and each department of the City, except those specifically allowed separate counsel by the Charter.
8 Charter § 401. The City Attorney advises all officers, boards, commissions, and other agencies of
9 the City on legal matters, and acts as counsel on behalf of the City or any of its officers, boards,
10 commissions, or other agencies in litigation involving any of them in their official capacity.
11 *Id.* § 401(6). Under section 220 of the Charter, the City Attorney serves as legal counsel to the
12 Independent Redistricting Commission, a thirteen-member body established by the Charter. The
13 Commission is charged with adjusting the boundary lines of the seven City Council districts and the
14 seven Oakland Unified School Board districts in conformance with the criteria and procedures set
15 forth in the Charter. *Id.* § 220. At least nine of thirteen Commissioners must approve the final
16 district plan for it to be in effect. *Id.* § 220(D)(3). The Commission has been undertaking an
17 exhaustive and transparent redistricting process but despite its good faith efforts, did not adopt a
18 final plan by the December 31, 2021 deadline provided for in the Charter. *Id.* § 220(G)(2). The City
19 Attorney is required by the Charter to “petition state court for an order prescribing the boundary lines
20 of the districts” in the event the Commission has not adopted a final plan by December 31, 2021. *Id.*

21 2. Respondent TIM DUPUIS is the Registrar of Voters of Alameda County and is
22 sued in his official capacity. Pursuant to an agreement with the City of Oakland, the Alameda County
23 Registrar of Voters administers the City’s elections. As a result, Respondent DUPUIS oversees the
24 administration of Oakland’s City Council and School Board elections, which will next occur on
25 November 8, 2022.

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1 **JURISDICTION AND VENUE**

2 3. This Court has jurisdiction over this action under Code of Civil Procedure
3 sections 1085 and 1086 and Elections Code section 13314. Petitioner is entitled to a writ of mandate
4 because the Oakland Charter imposes on Petitioner a mandatory duty to seek a court order prescribing
5 the boundary lines of council and school board districts if the Commission has not adopted a final plan
6 by December 31, 2021. Charter § 220(G)(2). Petitioner seeks an order to ensure that a new plan that
7 complies with all federal, state and local laws is in place for the City’s November 8, 2022, general
8 municipal election. Petitioner does not have a plain, speedy, and adequate remedy in the ordinary
9 course of law. If this Court does not act and the Commission has not adopted a final plan by April 17,
10 2022, the City will not have in place a redistricting plan for the City’s next municipal election that
11 complies with federal, state, and local law. In addition to having jurisdiction under Code of Civil
12 Procedure sections 1085 and 1086, this Court also has jurisdiction under Elections Code section 13314.
13 Petitioner is an elector of the City and if a writ of mandate is not issued, an error will occur by not
14 having legally compliant districting plans in place for the City’s municipal general election on
15 November 8, 2022. Issuance of a writ will not substantially interfere with the conduct of the election
16 provided that the court issues an order prescribing final plans by April 17, 2022.

17 4. Venue is proper under Code of Civil Procedure section 393 because the events
18 and actions of Respondent giving rise to the claims alleged herein occur in Alameda County.

19 **FACTUAL ALLEGATIONS**

20 **A. Measure DD and the Oakland Independent Redistricting Commission**

21 22 5. The Oakland City Council consists of eight Council members, seven of whom
23 are nominated by district and one of whom is elected at-large. Charter §§ 200 & 203. The Mayor is
24 not a member of the Council, but has a vote on the Council if the Council members are evenly
25 divided on a matter. *Id.* § 200.

26 6. The Oakland Unified School District Board of Education consists of seven
27 District School Directors, all of whom are nominated by district. *Id.* § 404.

1 7. The City is required to redistrict the City Council and School Board districts
2 every ten years following the release of the federal decennial census to ensure the districts are equal as
3 possible in population and comply with all federal, state and City redistricting laws. Historically, the
4 City Council performed this duty but in 2014 the City Council placed on the ballot and the voters
5 approved Measure DD, which established a thirteen-member Independent Redistricting Commission to
6 redistrict Council and School Board district boundaries beginning in 2021. Measure DD was approved
7 by a wide margin, with 61.45% Yes votes and 38.55% No votes.

8 8. Measure DD established, among other things, the qualifications and selection
9 process for commissioners, the redistricting criteria that adopted plans must follow, and the applicable
10 laws that apply to the conduct of the Commission’s business. Measure DD’s provisions are codified in
11 Charter section 220.

12 9. The Charter requires the Commission to (1) conduct an open and transparent
13 process enabling full public consideration of and comment on the drawing of district lines; (2) draw
14 district lines according to the redistricting criteria specified in section 220 of the Charter; and (3)
15 conduct itself with integrity and fairness. Charter § 220(C). The Commission was selected and
16 formed on August 27, 2020, and met for the first time on October 14, 2020.

17 10. The City Attorney serves as legal counsel to the Commission. Charter § 220(H).

18 11. The Charter requires that the Commission adopt “a final plan for the City of
19 Oakland specifically describing the district boundaries for each of the council and school districts” by
20 December 31, 2021. Charter § 220(G). The final plan must be approved by at least nine of the thirteen
21 Commission members. *Id.* § 220(D)(3). The Charter further states that if the Commission does not
22 adopt a final plan by December 31, 2021, “the City Attorney for the City of Oakland shall immediately
23 petition state court for an order prescribing the boundary lines of the districts in accordance with the
24 redistricting criteria and requirements set forth in this Section. The plan prescribed by the court shall
25 be used for all subsequent City Council elections until a final plan is adopted by the commission to
26 replace it.” *Id.* § 220(G)(2).

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1 **B. The Independent Redistricting Commission’s Efforts to Adopt a Final Plan**

2 12. The thirteen members of the current Commission were selected by August 27,
3 2020 and the Commission held its first meeting on October 14, 2020. Since then, the Commission has
4 undertaken extensive outreach efforts to encourage public participation, hired a demographer to assist
5 the commission with drawing lines, and held 33 public meetings and workshops, including ten public
6 hearings at which the Commission received public comment about draft maps. *See generally* City of
7 Oakland, Meetings for Redistricting Commission, found at [https://www.oaklandca.gov/boards-](https://www.oaklandca.gov/boards-commissions/redistricting-commission/meetings)
8 [commissions/redistricting-commission/meetings](https://www.oaklandca.gov/boards-commissions/redistricting-commission/meetings).

9 13. In order to encourage public participation and transparency, the Commission
10 also established dedicated website pages on the City’s website that provide information about the
11 redistricting process, and serves as a hub where all information about public resources, draft maps,
12 Commission meetings, and public comments are posted. *See* City of Oakland, Redistricting
13 Commission, found at <https://www.oaklandca.gov/boards-commissions/redistricting-commission>. The
14 Commission also created an online survey for the public, provided an online comment process for the
15 public to provide information about communities of interest, and established an online tool that
16 members of the public could use to draw and submit their own draft maps. *Id.*

17 14. Throughout the Commission’s work, many dozens of people participated in
18 public hearings and special meetings and more than 100 speakers provided testimony. The
19 Commission received more than 1,100 pages of written feedback from the public, and multiple draft
20 maps.

21 15. At its meeting on September 8, 2021, the Commission directed the demographer
22 to draw four draft maps (designated as Draft Maps A through D) for consideration. Those maps were
23 posted on the Commission’s website on October 11, 2021. City of Oakland, District Map Proposals,
24 found at <https://www.oaklandca.gov/topics/district-map-proposals>. Those draft maps were considered
25 at subsequent meetings. In addition, on November 1, the Commission requested that the demographer
26 draft four new maps (designated as Draft Maps E through H), which were posted on November 10,
27 2021. *Id.* Those draft maps were considered at subsequent meetings. On November 16, the
28

1 Commission requested that the demographer draft three additional draft maps (designated as Draft
2 Maps K through I), and those were posted on November 29. *Id.* In addition, the Commission
3 discussed and considered a number of publicly-submitted maps and asked that the consultants
4 incorporate features of those maps into the Commission’s own draft maps. From November 30
5 through December 30, 2021, the Commission held five meetings and two workshops to receive public
6 input on the draft maps and attempt to agree on a final plan that could receive nine votes as required by
7 the Charter.

8 16. In October, the Commission sought advice from Petitioner’s office as to whether
9 it could extend the deadline to adopt a plan past the Charter-imposed deadline of December 31. On
10 November 5, 2021, the City Attorney’s office issued a public legal opinion concluding that the
11 “Charter does not authorize the Redistricting Commission, Council, Mayor, City Administrator or any
12 other person or entity to extend the deadline.”

13 17. On December 13, 2021, the Commission voted to advance two maps, neither of
14 which had approval from the requisite super-majority of Commissioners.

15 18. Despite these exhaustive and good faith efforts, the Commission was unable to
16 adopt a final plan by December 31, 2021. The Commission, however, is continuing to meet in an
17 effort to adopt a final plan. It met on January 6, 2022, but again did not reach the requisite super-
18 majority approval on a final plan. The Commission intends to continue meeting.

19 **C. The Proposed Remedy**

20 19. Petitioner brings this petition in her official capacity as City Attorney and as
21 required by the City Charter for a writ of mandate seeking “an order prescribing the boundary lines of
22 the districts in accordance with the redistricting criteria and requirements set forth in [the Charter].”
23 Charter § 220(G)(2). Under the Charter, the plan prescribed by the court shall be used for subsequent
24 elections “until a final plan is adopted by the commission to replace it.” *Id.*

25 20. Although the Charter imposes a deadline of December 31, 2021 on the
26 Commission, in practical terms, adoption of a final plan by that date is not necessary for the effective
27 administration of the City’s next municipal election.

1 21. The City’s next election for council members and school board directors will not
2 be held until November 8, 2022, at which time the even-numbered districts (2, 4, and 6) of both bodies
3 will be up for election. The council and school board elections are conducted by ranked choice voting,
4 also known as instant runoff voting. Charter § 1105. As a result, the City does not have June primary
5 elections for those offices, and the boundaries for the new districts are not needed for election purposes
6 until preparations commence for the City’s general municipal election on November 8, 2022.

7 22. The State FAIR MAPS Act, which generally governs the redistricting process
8 for counties and cities, including charter cities like Oakland, requires that all municipal redistricting
9 plans be adopted no later than 205 days before the city’s next regular election, if the city does not have
10 a regular election occurring after January 1, 2022 and before July 1, 2022. Cal. Elec. Code
11 § 21622(a)(3). Thus, cities like Oakland that have their next municipal election on November 8, 2022,
12 may adopt final redistricting plans at any time up to and including April 17, 2022. Although that
13 deadline does not apply to charter cities like Oakland that have adopted a different redistricting
14 deadline by ordinance or charter (*see id.* § 21622(b)), it demonstrates that county registrars and other
15 elections officials that administer elections will be accepting new municipal redistricting plans up to
16 April 17, 2022 for use in the November 2022 election.¹

17 23. Further, adopting and implementing a new plan by April 17, 2022, will not
18 disrupt the ability of candidates for council and school district offices to qualify for and file the
19 necessary paperwork for those elections. Candidates must be residents of the district from which they
20 are running for thirty days immediately preceding their nomination or appointment. Charter § 201.
21 Nomination documents will not even be available for candidates for those offices to pick up and begin
22 circulating until July 18, 2022. Cal. Elec. Code § 10220.

23 24. In sum, as a practical matter, there is no need to have a redistricting plan
24 adopted until April 17, 2022. As a result, Petitioner requests that the court refrain from taking any
25 immediate action to prescribe a plan, and give the Commission additional time to adopt a final plan.

26 ¹ The only other relevant deadline regarding the use of new redistricting plans is Elections Code
27 section 12262, which states that jurisdictional boundary changes occurring less than 125 days before
28 an election shall not be effective for purposes of that election.

1 The Commission is continuing to meet in an effort to adopt a final plan in time for the City’s next
2 elections. If the Commission adopts a final plan by April 17 that complies with the criteria set forth in
3 the Charter, there will be no need for a court-ordered plan. At the same time, the court will need some
4 time to begin the process of familiarizing itself with this issue, hold a hearing, and then order a plan in
5 place, all of which must occur by April 17, 2022 to ensure the City has a lawful plan in place for the
6 City’s November 2022 general municipal election.² Therefore, if the Commission has not adopted a
7 final plan by the end of January, Petitioner intends to file a motion in February of 2022 seeking a court
8 order prescribing a final plan that will be in effect as of April 17 if the Commission has not adopted a
9 final plan by then. Conversely, if the Commission adopts a final plan by the end of January, Petitioner
10 will seek to dismiss this case as moot.

11 25. Under that proposed schedule, if Petitioner files a motion in early February, the
12 remedy Petitioner will seek is an order adopting a plan that Respondent DUPUIS must use that
13 complies with the criteria in the Charter and is consistent with the plan preferred by the largest number
14 of Commissioners at the time, provided that such majority-support is discernable and provided the plan
15 is in compliance with the redistricting criteria set forth in the Charter.

16 26. Such a remedy is supported by both the plain text of the Charter and well-
17 established legal principles. The Charter expressly favors a map approved by the Commission over a
18 court-imposed remedy, and a court-imposed plan is to be used only as an interim solution of last resort.
19 Specifically, the Charter states that a court-imposed plan shall only remain in place until a “final plan
20 is adopted by the commission to replace it.” Charter § 220(G)(2).

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26 ² The City cannot simply revert back to the existing boundaries because, in light of the new census
27 data, those districts do not have equal population as required by the Unites States Constitution. Further
28 those boundaries, which were drawn in 2011, were not drawn in accordance with the districting criteria
established by Measure DD, which was adopted in 2014.

1 procedures on an adjusted timeline. The voters enacted Propositions 11 and 20 to
2 transfer the responsibility of drawing new district maps from the Legislature to an
3 independent panel of citizens. (citation) In so doing, the voters tasked this court with
4 redistricting only as a matter of last resort. (citation) For this court to undertake to
5 draw maps in the first instance would both displace the role voters envisioned for the
6 Commission and preclude opportunities for the public to participate in the process as
7 the voters intended.

8 *Legislature of State of California v. Padilla*, 9 Cal. 5th 867, 880 (2020).

9 29. In sum, redistricting plans proposed by the legislative body of the jurisdiction
10 are preferred over court imposed plans, and must be accorded great deference. So strong is that
11 principle of deference that courts must accept plans proffered by the jurisdiction over an alternative
12 court plan even if the legislative plan has not been adopted in compliance with all of the prerequisites
13 for adopting the plan or law. *See Navajo Nation v. Arizona Independent Redistricting Commission*,
14 230 F.Supp.2d 998, 1008 (D. Ariz. 2002) (“the requirement of deference to a legislative plan exists
15 even in cases where the plan does not strictly comply with state law, particularly where there are
16 exigent circumstances”); *see also Tallahassee Branch of NAACP v. Leon County*, 827 F.2d 1436
17 (11th Cir. 1987) (county plan entitled to deference though county enacted a remedial plan without a
18 referendum as required by state law).

19 **FIRST CAUSE OF ACTION**

20 **WRIT OF MANDATE – CODE OF CIVIL PROCEDURE**
21 **§§ 1085, 1086, ELECTIONS CODE § 13314**
22 **AND OAKLAND CITY CHARTER § 220**

23 30. Petitioner hereby realleges and incorporates paragraphs 1 through 29 above as if
24 fully set forth herein.

25 31. Under Code of Civil Procedure sections 1085 and 1086, Elections Code
26 section 13314, and the Oakland City Charter section 220, the Court should issue a writ of mandate no
27 later than April 17, 2022, adopting a redistricting plan for Oakland city council and school board
28 director districts consistent with the plan preferred by the largest number of Commissioners at the time,
provided that such majority-support is discernable and provided the plan is in compliance with the
redistricting criteria set forth in the Charter, and commanding Respondent DUPUIS to use such plan

1 for the November 8, 2022 municipal election. A writ should issue because the City must have a legal
2 redistricting plan in place for its next general municipal election on November 8, 2022, and such a plan
3 must be submitted to the County Registrar by April 17, 2022, in order to be used in the orderly
4 administration of that election.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, petitioner prays for judgment as follows:

7 1. That this Court issue a writ of mandate pursuant to Code of Civil Procedure
8 sections 1085 and 1086, Elections Code section 13314, and the Oakland City Charter section 220, no
9 later than April 17, 2022, adopting a redistricting plan for Oakland city council and school board
10 director districts that complies with the redistricting criteria of the Oakland Charter and that is most
11 consistent with the desired plan of the largest number of Commissioners at that time, assuming such
12 majority-support is discernible, and mandating that Respondent DUPUIS use such plan for the City's
13 next general municipal election on November 8, 2022, unless the Commission adopts a final plan
14 before April 17, 2022. A writ should issue because the City must have a legal redistricting plan in
15 place for its next general municipal election on November 8, 2022, and pursuant to state law such a
16 plan must be submitted on or before April 17, 2022.

17 2. That this Court grant such other, different, or further relief as the Court may
18 deem just and proper.

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20 Dated: January 7, 2022

OLSON REMCHO LLP

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23 By: 

Thomas Willis

24 Attorneys for Petitioner BARBARA J. PARKER, in
25 her official capacity as City Attorney for the City of
26 Oakland

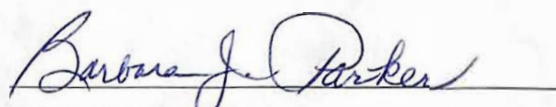
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VERIFICATION

I, BARBARA J. PARKER, declare:

I am the petitioner in the above-captioned case. I have read the foregoing Verified Petition for Writ of Mandate and believe that the matters therein are true and on that ground allege that the matters stated therein are true.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 7th day of January 2022, at Oakland, California.



BARBARA J. PARKER, in her official capacity
as City Attorney for the City of Oakland